

EXHIBIT

#10

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

BAYONNE MEDICAL CENTER, :
Debtor and :
Debtor-in-Possession; and :
ALLEN D. WILEN, in his : DEPOSITION OF:
capacity as Liquidating :
Trustee and Estate : CAROLINE EVANS
Representative for the Estate :
of Debtor, Bayonne Medical :
Center, : VOLUME I
: (Pages 1-229)

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :
L.L.C., a New Jersey limited :
liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of CONNELL FOLEY, L.L.P., 85
Livingston Avenue, Roseland, New Jersey, on
THURSDAY, MAY 6, 2010, commencing at 10:09 a.m.,
pursuant to Notice.

DepoLink
Court Reporting & Litigation Support Services
Phone (973) 353-9880 Fax (973) 353-9445
www.depolinklegal.com

1 Q. What did he tell you about the
2 selection of Omni, if anything?

3 A. He didn't tell me anything about it.
4 He just said it was, yeah, that's kind of the way it
5 went.

6 Q. He didn't tell you why the decision
7 was made for Omni, as opposed to the competitor?

8 A. It was not Marvin, but it was Heather
9 who told me Avery had the beds.

10 Q. For the record, that's Heather Aaron?

11 A. Uh-huh.

12 Q. When Heather told you that "Avery had
13 the beds," I presume that means that Avery was going
14 to be the chosen developer for the SNF?

15 A. Yeah. At the time the state was not
16 issuing new licenses for beds. And even before the
17 SNF initiative, Heather was trying to get beds.

18 Q. So now when you say the state wasn't
19 issuing new licenses for beds, how did that play, if
20 at all, into the selection of Omni as the developer
21 of the SNF?

22 A. Well, he had beds and we needed beds
23 in order to have a SNF.

24 Q. When you say "he had beds," you mean
25 he had licenses for beds?

1 A. Correct, his company had all the
2 licenses.

3 Q. And you say the state wasn't issuing
4 licenses for beds?

5 A. We couldn't get anymore.

6 Q. And the competitor for the position
7 of developer of the SNF did not have any licenses
8 for beds for this area?

9 A. I don't know the answer to that. I
10 wasn't told that they didn't, I was just told that
11 he did.

12 Q. You didn't discuss with anyone
13 whether the competitor did or didn't have licenses
14 for beds?

15 A. Uh-uh.

16 Q. And what was the next thing, if any,
17 that came to your attention about the SNF project
18 after Heather told you that Omni had been chosen?

19 A. That we were going to build a nursing
20 home.

21 Q. Was she the exclusive source of your
22 information about the proposed development project
23 with Omni for the SNF at the Bell Street building?

24 A. No, she wasn't. Marvin, you know,
25 talked about it. This went on for a while, I mean

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1 Q. If you remembered exactly when, you'd
2 be a hero. So it was sometime in this time frame
3 that --

4 A. In this time period where we were
5 building a nursing home and we were going to lease
6 back space to take it out of the original footprint
7 and into this new space.

8 Q. And who introduced you to Avery?

9 A. I don't remember if it was Marvin or
10 Heather or they gave me his phone number. I don't
11 remember, actually.

12 Q. This is sometime after he had been
13 selected by BMC?

14 A. Yes.

15 Q. Did whoever introduce you to Avery,
16 tell you or did you learn from some other source
17 what your role was to be with Avery?

18 A. I remember exactly, actually. Marvin
19 came into my office because they were going to ask
20 Avery for a donation. And Heather and Marvin wanted
21 me to join in the endeavor of asking Avery for a
22 pledge.

23 Q. That was the foundation, no pun
24 intended, that was the foundation, then, or the
25 springboard for --

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1 why it is that the first payment date changed from
2 July 2008 to June 2006?

3 A. No, I don't.

4 Q. Did you discuss with Avery at any
5 time the first payment date on the October 14th
6 form?

7 A. I don't recall that.

8 Q. Do you recall discussing with him the
9 first payment date on the October 21 form?

10 A. I don't recall that I did, no.

11 Q. And at some point, whether it was
12 because Avery signed it in front of you or because
13 you got it back after he signed it outside of your
14 presence, you did receive this document back signed
15 by Avery; is that correct?

16 A. Yes.

17 Q. What did you do with it then?

18 A. I didn't give it to Heather because
19 she wasn't in, I gave it to Marvin.

20 Q. What did you say to Marvin, if
21 anything, and what did he say to you?

22 A. I didn't say anything but "Here's the
23 resigned form."

24 Q. Did anyone tell you that this pledge
25 was necessary in order for the SNF deal to be

1 awarded to Avery?

2 A. No, they did not tell me that.

3 Q. As far as you know, was this pledge
4 an essential for Avery to have been awarded the SNF
5 deal?

6 A. No, not as far as I knew.

7 Q. Did you ever talk to Herman Brockman
8 about this pledge?

9 A. Not personally, but he was actually
10 in pretty close to when they got it and he was
11 actually in the hospital, and he was there when they
12 were discussing it. It was Marvin, Rob, me, I came
13 out into the hallway, Steph was there, Stephanie was
14 there. He was there, Herman was there, they told
15 him, yep.

16 Q. So now you mentioned earlier that you
17 didn't tell Avery the first time you talked to him
18 about the pledge that it would be unenforceable, but
19 if I'm remembering your testimony correctly, at some
20 point later you did tell him that it would not be
21 binding; is that correct?

22 A. Yes.

23 MR. FALANGA: Object to the form.

24 Q. When was it that you first told him
25 that it would not be binding?

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1 A. Rob was not a part of the vascular
2 campaign, foundation, whatever that was.

3 Q. All right.

4 A. And it became evident that, at least
5 with these consultants, that Vinny wasn't going to
6 be able to do this. So we all began asking vendors.
7 I asked Marvin's vendors, I asked Stephanie's
8 vendors, Stephanie asked her own vendors. And
9 Marvin had trouble doing that, sitting down to a
10 lunch and expressing the mission of this vascular
11 center and conveying what it is we were trying to do
12 with this vascular center. I didn't have a problem
13 doing that. So I actually did a lot of fundraising
14 in that regard.

15 Q. This is '03, '04?

16 A. '03, '04, this was the vascular
17 campaign. I asked Turner Construction for money. I
18 asked Self Pay Solutions for money. I asked Phoenix
19 Nursing. So, you know, whenever somebody needed
20 help asking or putting that together, I would have
21 helped. So that was why I think Heather and Marvin
22 were in my office that day.

23 Q. In connection with your efforts in
24 the vascular campaign, did it ever come to your
25 attention that Rotolo, the consultant for the

1 vascular campaign, recommended that in pursuing
2 pledges, you tell the prospective pledgor that the
3 pledges were not enforceable?

4 A. Yes.

5 MR. FALANGA: Object to the form.

6 THE WITNESS: I'm sorry.

7 Q. And more specifically, do you recall
8 what it was that you learned about Rotolo having
9 given that advice?

10 A. I actually heard that from Vince
11 Lombardo, he was very specific. Because I said,
12 "Vinny, you've got us out there asking for money,
13 and these people are asking questions. What are we
14 supposed to say?" And that's when he gave me a very
15 specific example and said that we can't hold them to
16 it. Actually, I'll tell you exactly what he said,
17 "They weren't binding."

18 Q. And did he tell you that you were to
19 tell that to prospective pledgors?

20 A. If they got nervous and said, Well,
21 what am I supposed to do? What if I lose my
22 business? And I was supposed to say, "They're not
23 going to hold you to it. They're not going to go
24 after you for it."

25 Q. And is that what Rotolo had

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1 MR. FALANGA: Objection.

2 A. I don't remember that.

3 Q. Was it before the October 14th pledge
4 form?

5 A. It could have been, sure.

6 Q. Were there others present when you
7 told him that the pledge would not be binding?

8 A. I don't remember that.

9 Q. So far as you know, were others at
10 BMC aware of the fact that you were telling Avery
11 that the pledge was not binding?

12 MR. FALANGA: Object to the form.

13 A. Yes, and we all told, that was part
14 of the Rotolo spiel.

15 Q. What does that mean? I know what it
16 means, but the record doesn't.

17 A. That means it was part of the
18 Elements for Effective Fundraising, that was the
19 name of the document.

20 Q. What was that element?

21 A. It was phrased like you had to put
22 the donor at ease and not make them feel like it was
23 a debt, that was the document verbiage.

24 Q. So it was your understanding that
25 that meant that you had to tell the pledgor that the

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15 specific example and said that we can't hold them to
16 it. Actually, I'll tell you exactly what he said,
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18 Q. And did he tell you that you were to
19 tell that to prospective pledgors?

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21 what am I supposed to do? What if I lose my
22 business? And I was supposed to say, "They're not
23 going to hold you to it. They're not going to go
24 after you for it."

25 Q. And is that what Rotolo had

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1 MR. FALANGA: Objection.

2 A. He was the only person who said it to
3 me.

4 Q. Do you know whether others beside you
5 understood that to be the rule?

6 A. Yes, sir.

7 MR. FALANGA: Objection to form.

8 Q. And how do you know that others
9 beside you knew that to be the rule or the protocol
10 for solicitation of pledges?

11 A. Because I heard Stephanie repeat it.
12 Stephanie said it to me about Phoenix, about Phoenix
13 Nursing.

14 Q. Anybody else involved in that issue?

15 A. Not that I remember.

16 MR. FALANGA: Objection.

17 Q. Do you know Dr. Wozniak?

18 A. Deborah, yes.

19 Q. Did Dr. Wozniak make a pledge to
20 either the foundation or the hospital?

21 A. She made a pledge, yes, she did.

22 Q. Was her pledge honored or dishonored?

23 MR. FALANGA: Object to the form.

24 MR. SAMSON: Do you understand the
25 question?

1 THE WITNESS: I do.

2 MR. SAMSON: I mean to the extent

3 "honored."

4 THE WITNESS: Uh-huh.

5 A. The only information that I have
6 about Debbie Wozniak's pledge is what Vinny told me.

7 Q. And what did he tell you?

8 MR. FALANGA: Objection to form.

9 A. She didn't pay it.

10 Q. Do you know whether any action was
11 ever taken to enforce the pledge against her?

12 A. I don't know the answer to that.

13 Q. Do you know whether any legal action
14 was ever taken by BMC or the foundation to enforce a
15 pledge?

16 A. Not that I know of.

17 Q. Do you recall ever discussing with
18 anyone the issue of pursuing legally a pledgor to
19 make a pledge binding and enforceable?

20 A. That I discussed with someone?

21 Q. Yes.

22 A. No, I don't remember that.

23 Q. So we have you back now at this
24 meeting with Marvin. And at some point after that
25 meeting you had your first face to face with Avery?

EXHIBIT

#16A

Auriemma, Robert

From: Auriemma, Robert

Sent: Monday, October 09, 2006 5:13 PM

To: Vigliano, Alfred

Cc: Elmo, Angelo

Subject: Wipfli Open Item Listing: Reference: Kim Other Rec-0.2 The confidential pledge form indicates the original receivable was for \$1,000,000 payable in 4 annual install starting 11/05.

Summary of 2005 Activity:

The Foundation recorded a \$1 million Pledge Receivable from a private donor and credited income.

The Foundation subsequently recorded an inter-company liability (Due to BMC) and debited Net Assets. BMC simultaneously recorded an Inter-company receivable (Due from Foundation) and credited Other Operating Revenue.

Foundation Net Assets netted to \$0.

The revenue resides only on BMC's books. There is no duplication of this receivable.

The Inter-company BMC Receivable and Foundation Liability were appropriately eliminated on the Audited 2005 Consolidating Balance Sheet.

Since Revenue was included only on BMC's books, no elimination entries were required on the Audited 2005 Consolidating Statement of Operations.

Collection Status:

To date, only \$100,000 has been received from the donor and the remaining balance of the Pledge Receivable on the Foundations books is \$900,000.

The Foundation has not yet remitted this money to BMC and further collections from the donor are doubtful.
Bob

This email pertains only to
GJ #20 / Group #2 regarding
the \$1 million pledge. The Receivable
is written-off in 2006. (BMC & Foundation)
The entry for '962,555.14 (GJ #20 / Group #2)
has no backup or explanation & is
reversed in 2006. (BMC & Foundation)

2005 Year-end
BMC ~~XXXXXX~~ J.E.

RUN DATE: 01/23/06
RUN TIME: 1447
USER: MAGNL

Bayonne Medical Center GL **LIVE**
GL BATCH LIST

PAGE 1

12/31/05 GENERAL #20 (POSTED)

COMMENT:
POST TO: DEC 2005
CONTROL AMOUNT:
CONTROL COUNT:
CREATED: MAGNL
LAST EDITED: MAGNL
POSTED: MAGNL

DATABASE:
CONTROL HASH:
ACTUAL HASH: 2914394585
On Jan 23, 2006 @ 2:41pm
On Jan 23, 2006 @ 2:46pm
On Jan 23, 2006 @ 2:46pm

	COUNT	DEBITS		CREDITS	
		AMOUNT	COUNT	AMOUNT	
NORMAL	11	6,610,468.72	9	6,610,468.72	
REVERSING	0	0.00	0	0.00	
	11	6,610,468.72	9	6,610,468.72	

ENTRY
GROUP DESCRIPTION ENT GL ACCOUNT

1 GJ#20 TO RECLASSIFY SCH OF X-RAY TO NURSING
1 01.8021.0720
2 01.8022.0720
3 01.8021.0760
4 01.8022.0760
5 01.8021.0870
6 01.8022.0870

Totals For Group # 1

GJ#20 TO RECORD RELEASE OF FUNDS FOR OPERATIONS
1 01.1080.5400
2 01.1080.0800
3 01.5000.5475

Totals For Group # 2

GJ#20 TO RECORD RELEASE OF FUNDS FOR CAPITAL
1 01.1080.0800
2 01.2290.2910

Totals For Group # 3

GJ#20 TO RECORD AMOUNT DUE FR 3RD PARTY PAYOR
1 01.1073.0500
2 01.2071.2200
3 01.2071.2205
4 01.5500.6000
5 01.5500.6010

Totals For Group # 4

GJ#20 TO REVERE PRIOR ADJUSTMENTS
1 01.5500.6000
2 01.1060.0640

Totals For Group # 5

GJ#20 TO CORRECT MISPOSTING OF C/R FOUNDATION
1 01.5000.5470
2 01.5000.5475

DEBIT	CREDIT	ACCOUNT DESCRIPTION
77.16		BAY SCHOOL OF NURSING PURCH MAINT EQUIP
45.76	77.16	BAY SCHOOL OF RADIOLOGY PURCH MAINT EQUIP
110.66	45.76	BAY SCHOOL OF NURSING TELEPHONE
233.58	110.66	BAY SCHOOL OF RADIOLOGY TELEPHONE
	233.58	BAY SCHOOL OF NURSING LEASE PAYMENT
		BAY SCHOOL OF RADIOLOGY LEASE PAYMENT

BAY PLEDGE RECEIVABLE - CURRENT
BAY BH DUE FROM FOUNDATION
BAY OTHER OPERATING REV FOUNDATION REIMBURS

BAY BH DUE FROM FOUNDATION
BAY OPERATING FUND BALANCE

BAY EST. THIRD PARTY RECEIVABLE
BAY EST 3RD PARTY S/T MCR-MEDICARE
BAY EST 3RD PARTY S/T MCR-MEDICAID
BAY SERVICE CHARGE ALLOW FHC MEDICARE
BAY SERVICE CHARGE ALLOW FHC MEDICAID

BAY SERVICE CHARGE ALLOW FHC MEDICARE
BAY BILLED A/R ALLOW

BAY OTHER OPERATING REV BH FOUNDATION GRANT
BAY OTHER OPERATING REV FOUNDATION REIMBURS

BMC036161

Month Ending December-05
Journal Entry # 1205-17
Reversing Date

To adjust to/from BMC
To record Transfer to BMC
To record transfer to BMC

BMC036162

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#17

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1 A. He asked me to talk to Avery about
2 the pledge.

3 Q. And before talking about the Avery
4 pledge, you say what was happening was that a group
5 was reaching out to those who had relationships with
6 the hospital?

7 A. Uh-huh.

8 MR. FALANGA: Object to the form.

9 Q. And was it those who had long-term
10 relationships with the hospital?

11 A. Some and some new vendors, it was a
12 mix.

13 Q. At the time that you were asked to
14 reach out to Avery for the pledge, did you
15 understand, from whatever source, that it was
16 anticipated there would be a relationship between
17 the hospital and Avery?

18 A. Yes, I did.

19 Q. Was it your understanding that it
20 would be a long-term relationship?

21 A. Yes, I did. He was building a
22 nursing home on the corner.

23 Q. And which the hospital was going to
24 be a lessee?

25 A. That we were going to lease space

1 back, yes.

2 Q. For long term?

3 A. Yes.

4 Q. Twenty years?

5 A. Sure, yes.

6 MR. FALANGA: Object to the form.

7 Q. So then there came a time that you
8 did solicit Avery?

9 A. Yes.

10 Q. Where were you and where was he,
11 where did it happen?

12 A. I don't remember. It might have been
13 in the hospital in my office. I don't remember
14 exactly where it took place, but I did have the
15 conversation with him.

16 Q. Had you met him before?

17 A. I think I did meet him before. Yes,
18 I did. I think we had a phone conversation and then
19 we met in my office where we didn't talk about the
20 pledge. As I discussed before, we kind of talked
21 about business and our families and things like
22 that.

23 Q. Did you invite him to the hospital
24 that day?

25 A. I think I did. Yes, I did.

EXHIBIT

#18

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

BAYONNE MEDICAL CENTER, :

Debtor and :

Debtor-in-Possesssion; and :

ALLEN D. WILEN, in his :

capacity as Liquidating :

Trustee and Estate :

Representative for the Estate :

of Debtor, Bayonne Medical :

Center, :

DEPOSITION OF:

CAROLINE EVANS

VOLUME I

(Pages 1-229)

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited :

liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of CONNELL FOLEY, L.L.P., 85
Livingston Avenue, Roseland, New Jersey, on
THURSDAY, MAY 6, 2010, commencing at 10:09 a.m.,
pursuant to Notice.

DepoLink
Court Reporting & Litigation Support Services
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www.depolinklegal.com

1 A. He asked me to talk to Avery about
2 the pledge.

3 Q. And before talking about the Avery
4 pledge, you say what was happening was that a group
5 was reaching out to those who had relationships with
6 the hospital?

7 A. Uh-huh.

8 MR. FALANGA: Object to the form.

9 Q. And was it those who had long-term
10 relationships with the hospital?

11 A. Some and some new vendors, it was a
12 mix.

13 Q. At the time that you were asked to
14 reach out to Avery for the pledge, did you
15 understand, from whatever source, that it was
16 anticipated there would be a relationship between
17 the hospital and Avery?

18 A. Yes, I did.

19 Q. Was it your understanding that it
20 would be a long-term relationship?

21 A. Yes, I did. He was building a
22 nursing home on the corner.

23 Q. And which the hospital was going to
24 be a lessee?

25 A. That we were going to lease space

1 back, yes.

2 Q. For long term?

3 A. Yes.

4 Q. Twenty years?

5 A. Sure, yes.

6 MR. FALANGA: Object to the form.

7 Q. So then there came a time that you
8 did solicit Avery?

9 A. Yes.

10 Q. Where were you and where was he,
11 where did it happen?

12 A. I don't remember. It might have been
13 in the hospital in my office. I don't remember
14 exactly where it took place, but I did have the
15 conversation with him.

16 Q. Had you met him before?

17 A. I think I did meet him before. Yes,
18 I did. I think we had a phone conversation and then
19 we met in my office where we didn't talk about the
20 pledge. As I discussed before, we kind of talked
21 about business and our families and things like
22 that.

23 Q. Did you invite him to the hospital
24 that day?

25 A. I think I did. Yes, I did.

1 Q. Did you tell him why you were
2 inviting him?

3 A. No, I said for coffee.

4 Q. Sneaky. Was it just the two of you
5 that day --

6 A. In the office, yes, it was.

7 Q. No one else was around?

8 A. Uh-uh.

9 Q. Tell me as best you can recall how
10 the conversation went.

11 A. The first conversation I had with
12 him?

13 Q. The first conversation.

14 A. We talked about my ex-husband being
15 Jewish, we talked about --

16 Q. I'm sorry, I mean --

17 A. You just said.

18 Q. You're right. The substantive
19 conversation about the pledge, let's start with
20 that.

21 A. I don't know that that was the day.
22 I think it was the subsequent -- I don't know that I
23 took that opportunity.

24 Q. Then take me to the next time or
25 whatever time it was when you first talked to him

1 about the pledge.

2 A. I talked about him being a long-term
3 partner. I talked about how it was going to be
4 great to have a nursing home on the corner, about
5 how the admissions were going to be great, from my
6 perspective, how the length of stay was going to be
7 positively affected. I talked about the partnership
8 with St. Vincent's, that that was another market
9 that he could pull from. We talked about a lot of
10 things like that. I also talked about how much it
11 costs to run a hospital, and he kind of went down
12 that road, and asked him for a pledge. I don't know
13 the specific information.

14 Q. When you asked him for a pledge, did
15 you ask him for a specific amount?

16 A. Yes.

17 Q. And what was that amount?

18 A. \$5,000,000.

19 Q. Where did that number come from?

20 A. That number came from Heather Aaron
21 and Marv Apsel. That's what they told me they were
22 going to have that conversation for.

23 Q. Did they tell you why that number?

24 MR. FALANGA: Object to the form.

25 A. No.